

Exhibit 12

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4 Case No. 09-CIV-9832 (BSJ) (RLE)
5 Case No. 09-CIV-9323 (BSJ) (RLE)

6 -----x
7 AUSTIN FENNER and IKIMULISA LIVINGSTON,

8 Plaintiffs,

9 v.

10 NEWS CORPORATION, NYP HOLDINGS, INC.,
11 d/b/a THE NEW YORK POST and DAN GREENFIELD
12 and MICHELLE GOTTHELF,
13 Defendants.

14 -----x
15 SANDRA GUZMAN,

16 Plaintiff,

17 v.

18 NEWS CORPORATION, NYP HOLDINGS, INC.,
19 d/b/a THE NEW YORK POST and COL ALLAN, in
20 his official and individual capacities,
21 Defendants.

22 -----x
23 CONFIDENTIAL

24 VIDEOTAPED DEPOSITION OF AMY SCIALDONE

25 New York, New York

Thursday, June 28, 2012

Reported by:

Amy A. Rivera, CSR, RPR, CLR

JOB NO. 51053

<p style="text-align: right;">Page 366</p> <p>1 AMY SCIALDONE - CONFIDENTIAL 2 MR. PIESCO: Objection. 3 You can answer. 4 5 6 7 8 9 10 11 12 REDACTED 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 367</p> <p>1 AMY SCIALDONE 2 MR. PIESCO: Objection. 3 You can answer. 4 A. No. 5 MR. CLARK: Can you mark this as 23. 6 We're getting very close. In fact, I think 7 this is about... 8 (Exhibit Scialdone 23, a memo dated 9 December 2, 2008 bearing Bates number NYP-FL 10 2322, was marked for identification at this 11 time.) 12 MR. PIESCO: Twenty-three? 13 MR. CLARK: Yes. 14 MR. PIESCO: Take your time. 15 MR. CLARK: It's a lot to read. 16 MR. PIESCO: Yes. 17 MR. CLARK: It's one page. 18 MR. PIESCO: Read the whole thing. 19 THE WITNESS: Yes. 20 MR. PIESCO: Go ahead. 21 For the record, Paul, this document 22 should be marked confidential. I don't know 23 why it is not. I don't know if that was a 24 mistake on our end, I just want -- 25 MR. CLARK: This was what you produced</p>
<p style="text-align: right;">Page 368</p> <p>1 AMY SCIALDONE - CONFIDENTIAL 2 to us. 3 MR. PIESCO: I get that 100 percent, 4 Paul, I just -- obviously, the information 5 in here is confidential. 6 This document should have been marked 7 confidential, I think, but... 8 THE WITNESS: Okay. 9 BY MR. CLARK: 10 Q. Have you had a chance? 11 A. Yes. 12 MR. PIESCO: Hold on one minute? Let 13 the truck pass, please. 14 Thanks. 15 16 17 18 19 REDACTED 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 369</p> <p>1 AMY SCIALDONE - CONFIDENTIAL 2 3 4 5 6 7 8 9 10 11 12 REDACTED 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AUSTIN FENNER and IKIMULISA)
LIVINGSTON,)
)
Plaintiffs,)
)
vs.) 09CIV9832
) (BSJ(RLE)
NEWS CORPORATION, NYP HOLDINGS,)
INC., d/b/a THE NEW YORK POST,)
and DAN GREENFIELD and MICHELLE)
GOTTHELF,)
)
Defendants.)
-----)

DEPOSITION OF AMY SCIALDONE
New York, New York
Tuesday, April 16, 2013

Reported by:
Philip Rizzuti
JOB NO. 59959

<p style="text-align: right;">Page 30</p> <p>1 Scialdone</p> <p>2 letter in your opinion provide a justification</p> <p>3 for Ms. Livingston's termination?</p> <p>4 A. Well a decision had been made and</p> <p>5 the fact that she had been working another job</p> <p>6 during her shifts over 400 times in a period</p> <p>7 of consistently for four or five years without</p> <p>8 getting any approval or discussing that with</p> <p>9 her supervisors seemed to be -- I believe that</p> <p>10 to be the reason for her termination, I agreed</p> <p>11 with that.</p> <p>12 Q. And when you refer to other jobs,</p> <p>13 are you referring to Mystery Shopping?</p> <p>14 A. Yes, as detailed in the letter.</p> <p>15 Q. Are you aware of what any of those</p> <p>16 instances of Mystery Shopping actually</p> <p>17 entailed as far as what Ms. Livingston was</p> <p>18 doing on those occasions?</p> <p>19 A. Only what is detailed in the</p> <p>20 letter.</p> <p>21 Q. Did Mr. Angelo ask you for any</p> <p>22 input into the termination of Ms. Livingston?</p> <p>23 A. No.</p> <p>24 Q. Did Mr. Angelo ever ask you if you</p> <p>25 agreed with the termination of Ms. Livingston?</p>	<p style="text-align: right;">Page 31</p> <p>1 Scialdone</p> <p>2 MR. LERNER: Again outside of the</p> <p>3 presence of counsel. Do you need the</p> <p>4 question read back?</p> <p>5 (Record read.)</p> <p>6 A. No.</p> <p>7 Q. Did you ever discuss Ms.</p> <p>8 Livingston's Mystery Shopping activities with</p> <p>9 her?</p> <p>10 A. No.</p> <p>11 Q. Are you aware of anyone else</p> <p>12 having discussed Ms. Livingston's Mystery</p> <p>13 Shopping activities with her at the New York</p> <p>14 Post?</p> <p>15 A. No.</p> <p>16 Q. Are you aware of whether or not</p> <p>17 Ms. Livingston was ever asked by an employee</p> <p>18 of the New York Post to stop her Mystery</p> <p>19 Shopping activities?</p> <p>20 A. No, I was not aware she was doing</p> <p>21 Mystery Shopping, or anyone had spoken to her</p> <p>22 about it.</p> <p>23 Q. Prior to -- well let me ask this</p> <p>24 question first.</p> <p>25 Did you meet with Ms. Livingston</p>
<p style="text-align: right;">Page 32</p> <p>1 Scialdone</p> <p>2 on or around February 26th to inform her of</p> <p>3 her termination?</p> <p>4 A. Yes.</p> <p>5 Q. And when was the last time you had</p> <p>6 communicated with Ms. Livingston before that</p> <p>7 termination meeting?</p> <p>8 A. The day before through E-mail</p> <p>9 requesting her to come in.</p> <p>10 Q. And before that when was the last</p> <p>11 time you had communicated with Ms. Livingston?</p> <p>12 A. I don't recall.</p> <p>13 Q. Do you believe that you had</p> <p>14 communicated with Ms. Livingston at any point</p> <p>15 during the year prior to sending her the</p> <p>16 E-mail about the meeting?</p> <p>17 MR. LERNER: During the twelve</p> <p>18 months ending on February 25th?</p> <p>19 Q. Yes, that twelve month period,</p> <p>20 yes, February 25, 2012 to --</p> <p>21 A. Not that I recall.</p> <p>22 Q. Can you recall any communications</p> <p>23 you had with Ms. Livingston between the time</p> <p>24 of her deposition in connection with this</p> <p>25 matter and her termination?</p>	<p style="text-align: right;">Page 33</p> <p>1 Scialdone</p> <p>2 MR. LERNER: Objection.</p> <p>3 A. What timeframe deposition are you</p> <p>4 talking about?</p> <p>5 Q. I would say approximately the very</p> <p>6 beginning of 2012 through the present?</p> <p>7 A. Can you rephrase the question?</p> <p>8 Q. Certainly. In fact let's phrase</p> <p>9 it this way. Can you recall any other</p> <p>10 communications with Ms. Livingston between the</p> <p>11 end of 2011 through the time you sent her the</p> <p>12 E-mail about the meeting?</p> <p>13 MR. LERNER: Objection.</p> <p>14 A. I don't recall.</p> <p>15 Q. Did you ever review any</p> <p>16 transcripts of depositions of Ms. Livingston?</p> <p>17 A. No.</p> <p>18 Q. Are you aware of any New York Post</p> <p>19 reporters having been disciplined for taking</p> <p>20 excessive time for lunch?</p> <p>21 A. No.</p> <p>22 Q. Are you aware of any New York Post</p> <p>23 reporters having been disciplined for taking</p> <p>24 excessive break time?</p> <p>25 MR. LERNER: Objection.</p>

<p style="text-align: right;">Page 34</p> <p>1 Scialdone</p> <p>2 A. Not that I recall.</p> <p>3 Q. Are you aware of any New York Post</p> <p>4 reporters having been disciplined or</p> <p>5 terminated in connection with work for another</p> <p>6 employer or entity other than the Post?</p> <p>7 A. No.</p> <p>8 Q. Are you aware of any terminations</p> <p>9 of reporters in connection with excessive</p> <p>10 lunch or break time?</p> <p>11 MR. LERNER: Objection.</p> <p>12 A. I am not aware of reporters who</p> <p>13 have had excessive time, taken excessive time.</p> <p>14 Q. Are you aware of any New York Post</p> <p>15 reporters who write for other publications or</p> <p>16 outlets other than the Post?</p> <p>17 A. No.</p> <p>18 Q. Are you aware of whether or not</p> <p>19 the Post has any policies regarding its</p> <p>20 reporters writing for other publications or</p> <p>21 outlets?</p> <p>22 MR. LERNER: Objection.</p> <p>23 A. That would be based on conflicts</p> <p>24 of interest and Standards of Business Conduct.</p> <p>25 It could potentially be a conflict of interest</p>	<p style="text-align: right;">Page 35</p> <p>1 Scialdone</p> <p>2 and you would have to get written permission</p> <p>3 if you were looking into something like that.</p> <p>4 Q. And would that conflict of</p> <p>5 interest requirement that written permission</p> <p>6 be obtained apply to any or all other income</p> <p>7 generating activities that a New York Post</p> <p>8 reporter might engage in apart from their</p> <p>9 employment with the New York Post?</p> <p>10 MR. LERNER: Objection. You can</p> <p>11 answer.</p> <p>12 A. Can you repeat the question,</p> <p>13 sorry.</p> <p>14 Q. Do you --</p> <p>15 A. I am distracted by the noise.</p> <p>16 MR. PEARSON: Read it back.</p> <p>17 (Record read.)</p> <p>18 MR. LERNER: If you understand the</p> <p>19 question you can answer it.</p> <p>20 A. My understanding is that the</p> <p>21 conflict of interest where you are working a</p> <p>22 second job is not allowed, working a second</p> <p>23 job or generating income is not allowed by the</p> <p>24 New York Post unless you are getting some type</p> <p>25 of written permission from your supervisor to</p>
<p style="text-align: right;">Page 36</p> <p>1 Scialdone</p> <p>2 do so because it could be potentially a</p> <p>3 conflict of interest.</p> <p>4 Q. If a reporter is generating income</p> <p>5 from a source other than another job would</p> <p>6 that be covered by the conflict of interest</p> <p>7 policy you described?</p> <p>8 MR. LERNER: Objection.</p> <p>9 A. I would have to look at all the</p> <p>10 details and understand what that is. But a</p> <p>11 full-time job with the Post would prohibit</p> <p>12 working another job.</p> <p>13 Q. Did you ever have any discussions</p> <p>14 with anyone either at the Post or any of its</p> <p>15 affiliates or parents about whether or not Ms.</p> <p>16 Livingston's Mystery Shopping activities would</p> <p>17 be considered a job?</p> <p>18 MR. LERNER: Objection.</p> <p>19 A. Repeat the question.</p> <p>20 Q. Sure. Did you ever talk with</p> <p>21 anybody at the New York Post or News</p> <p>22 Corporation about whether or not Ms.</p> <p>23 Livingston's Mystery Shopping activities would</p> <p>24 be considered a job or employment?</p> <p>25 MR. LERNER: Objection.</p>	<p style="text-align: right;">Page 37</p> <p>1 Scialdone</p> <p>2 A. I never spoke with anyone at the</p> <p>3 New York Post about Ms. Livingston's Mystery</p> <p>4 Shopping.</p> <p>5 Q. Apart from Mr. Angelo?</p> <p>6 A. Apart from counsel.</p> <p>7 Q. And Mr. Angelo?</p> <p>8 MR. LERNER: Objection.</p> <p>9 A. The information that I have on</p> <p>10 Mystery Shopping is in Mr. Angelo's letter.</p> <p>11 Q. Did you discuss that letter with</p> <p>12 Mr. Angelo?</p> <p>13 A. He provided me the letter.</p> <p>14 Q. Did you discuss it with</p> <p>15 Mr. Angelo?</p> <p>16 MR. LERNER: Outside the presence</p> <p>17 of counsel.</p> <p>18 A. No.</p> <p>19 Q. So would the conflict of interest</p> <p>20 policy that you described apply to reporters</p> <p>21 who spent time collecting income as let's say</p> <p>22 a movie extra?</p> <p>23 MR. LERNER: Objection.</p> <p>24 Incomplete hypothetical.</p> <p>25 A. Anything else they are doing</p>

<p style="text-align: right;">Page 38</p> <p>1 Scialdone</p> <p>2 outside of the Post collecting income I would</p> <p>3 have to look into the details of, and if they</p> <p>4 would have received permission to do so or</p> <p>5 not.</p> <p>6 Q. Are you aware of whether or not</p> <p>7 Mr. Angelo ever looked into the details of</p> <p>8 whether or not Mystery Shopping would be</p> <p>9 covered by the conflict of interest policy?</p> <p>10 MR. LERNER: Objection.</p> <p>11 A. I don't know if he looked into it.</p> <p>12 Q. Are you aware of whether or not</p> <p>13 there are any requirements or guidelines at</p> <p>14 the Post regarding when reporters are to take</p> <p>15 lunch?</p> <p>16 MR. LERNER: Objection.</p> <p>17 A. Specifically when they take lunch</p> <p>18 would be based on their schedule, but they are</p> <p>19 allowed a half hour lunch based by law.</p> <p>20 Q. Okay. Is that based on your</p> <p>21 understanding of New York State law?</p> <p>22 A. It is my understanding by law that</p> <p>23 they are required to have a half hour lunch.</p> <p>24 Q. What about under the Post</p> <p>25 policies, what if any rules or guidelines are</p>	<p style="text-align: right;">Page 39</p> <p>1 Scialdone</p> <p>2 there regarding lunch breaks for reporters?</p> <p>3 A. That is what we follow.</p> <p>4 Q. Is that expressed in any written</p> <p>5 policy?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Do you know what Mystery Shopping</p> <p>8 is?</p> <p>9 A. I understand it to be working for</p> <p>10 a company going in undercover or without</p> <p>11 someone knowing that you are working for them</p> <p>12 and assessing their business.</p> <p>13 Q. Have you discussed Mystery</p> <p>14 Shopping with anybody apart from in meetings</p> <p>15 with counsel?</p> <p>16 A. No.</p> <p>17 Q. And apart from the termination</p> <p>18 letter how did you become aware that Ms.</p> <p>19 Livingston ever engaged in Mystery Shopping?</p> <p>20 MR. LERNER: Well the problem with</p> <p>21 that letter is that she -- the answer may</p> <p>22 reflect conversations that she had with</p> <p>23 counsel that are privileged.</p> <p>24 MR. PEARSON: Can we just go off</p> <p>25 the record very briefly. Off the record.</p>
<p style="text-align: right;">Page 40</p> <p>1 Scialdone</p> <p>2 (Recess taken.)</p> <p>3 Q. Would you read back the question.</p> <p>4 (Record read.)</p> <p>5 MR. LERNER: Objection. You can</p> <p>6 answer.</p> <p>7 A. The conversation with counsel.</p> <p>8 Q. And apart from the termination</p> <p>9 letter did you review any other documents</p> <p>10 regarding Ms. Livingston's Mystery Shopping</p> <p>11 activities?</p> <p>12 A. No.</p> <p>13 Q. Are you aware of whether or not</p> <p>14 Ms. Livingston ever testified about her</p> <p>15 Mystery Shopping activities?</p> <p>16 A. Yes.</p> <p>17 Q. What is your understanding about</p> <p>18 when Ms. Livingston testified about Mystery</p> <p>19 Shopping activities?</p> <p>20 A. My understanding is that she</p> <p>21 testified in her 2013 deposition about her</p> <p>22 activities, Mystery Shopping activities.</p> <p>23 Q. Are you aware of any other</p> <p>24 testimony about her Mystery Shopping</p> <p>25 activities?</p>	<p style="text-align: right;">Page 41</p> <p>1 Scialdone</p> <p>2 A. No.</p> <p>3 Q. Are you aware of whether Ms.</p> <p>4 Livingston ever performed reporter duties</p> <p>5 outside of business hours between 9 and 5</p> <p>6 p.m.?</p> <p>7 A. I am not aware of what her</p> <p>8 reporter duties were for the New York Post or</p> <p>9 schedule. So it could have been outside those</p> <p>10 hours, I don't know her specific schedule.</p> <p>11 Q. Are you aware of whether or not</p> <p>12 Ms. Livingston ever reported overtime?</p> <p>13 A. She was eligible for it, I don't</p> <p>14 know if she reported it.</p> <p>15 Q. Apart from eating lunch are there</p> <p>16 other permissible non-work related activities</p> <p>17 that reporters may engage in over the course</p> <p>18 of the workday?</p> <p>19 MR. LERNER: Objection.</p> <p>20 A. If reporters during their working</p> <p>21 hours, the expectation is that they are</p> <p>22 working on work related activities.</p> <p>23 Q. Is the expectation that during</p> <p>24 working hours reporters only either eat lunch</p> <p>25 or spend time on their reporting activities?</p>

Page 42	Page 43
<p>1 Scialdone</p> <p>2 MR. LERNER: Objection.</p> <p>3 A. My expectation is they are working</p> <p>4 their shift.</p> <p>5 Q. I understand. But are there other</p> <p>6 activities that a reporter could permissibly</p> <p>7 engage in without running afoul of any New</p> <p>8 York Post policies that do not relate to their</p> <p>9 work as a reporter?</p> <p>10 MR. LERNER: Objection.</p> <p>11 A. Such as using the lady's room; I</p> <p>12 mean personal -- is that what you are talking</p> <p>13 about?</p> <p>14 Q. Well certainly using the lady's</p> <p>15 room, men's room might be one example. Are</p> <p>16 there other examples that you can think of?</p> <p>17 A. I am sure there is certainly a</p> <p>18 personal call that they may need to make or</p> <p>19 something like that. But anything else</p> <p>20 outside of that that they would need to let</p> <p>21 their supervisor know if they are not</p> <p>22 available or needing to leave their shift for</p> <p>23 any reason outside of the time they are taking</p> <p>24 off, I would expect that they are working.</p> <p>25 Q. Are you aware of whether or not</p>	<p>1 Scialdone</p> <p>2 reporters ever run personal errands during the</p> <p>3 course of their workday?</p> <p>4 A. I don't know.</p> <p>5 Q. Are you aware of any reporters</p> <p>6 going to the gym over the course of their</p> <p>7 workday?</p> <p>8 A. No.</p> <p>9 Q. Are you aware of reporters ever</p> <p>10 going to medical or other health related</p> <p>11 appointments over the course of the workday?</p> <p>12 A. No.</p> <p>13 Q. Would going to the gym during the</p> <p>14 workday be a permissible activity for a</p> <p>15 reporter to engage in?</p> <p>16 MR. LERNER: Objection.</p> <p>17 A. That would be between them and</p> <p>18 their supervisor.</p> <p>19 Q. Would that also be the case for</p> <p>20 personal errands or medical appointments?</p> <p>21 MR. LERNER: Objection.</p> <p>22 A. For a reporter who is on</p> <p>23 assignment, you know, considering the type of</p> <p>24 business we are in, anything that would take</p> <p>25 them away from their assignment and that they</p>
Page 44	Page 45
<p>1 Scialdone</p> <p>2 would be unavailable, I would think that they</p> <p>3 need to let their supervisor know and get</p> <p>4 permission to do so.</p> <p>5 Q. Are you aware of whether or not</p> <p>6 Ms. Livingston ever spoke to her supervisors</p> <p>7 about her Mystery Shopping activities?</p> <p>8 A. No.</p> <p>9 Q. Did anyone ever tell you whether</p> <p>10 or not Ms. Livingston had spoken to her</p> <p>11 supervisors about her Mystery Shopping</p> <p>12 activities?</p> <p>13 A. Prior to the 2013 deposition where</p> <p>14 she stated she had not?</p> <p>15 Q. Or at any time prior to her</p> <p>16 termination?</p> <p>17 A. Just from what I understand in the</p> <p>18 letter, from Jesse's letter about the</p> <p>19 termination that she hadn't.</p> <p>20 Q. I see.</p> <p>21 MR. LERNER: Off the record for a</p> <p>22 break.</p> <p>23 (Recess taken.)</p> <p>24 Q. So Ms. Scialdone, is there any</p> <p>25 written New York Post policy requiring that</p>	<p>1 Scialdone</p> <p>2 reporters or other Post employees share any</p> <p>3 non-work related activities apart from using</p> <p>4 the restroom or eating lunch with their</p> <p>5 supervisors?</p> <p>6 MR. LERNER: Objection.</p> <p>7 A. As I mentioned if it is something</p> <p>8 that is going to take a reporter away from a</p> <p>9 scene, a court where activity is happening</p> <p>10 that day and that, you know, they are going to</p> <p>11 be unavailable, they should let their</p> <p>12 supervisor know, or if it could potentially be</p> <p>13 a conflict of interest they should let their</p> <p>14 supervisor know.</p> <p>15 Q. And is that policy in writing</p> <p>16 anywhere?</p> <p>17 A. I believe in the Standards of</p> <p>18 Business Conduct about conflict of interest</p> <p>19 with second jobs, that is your guideline.</p> <p>20 Q. Are you aware of any performance</p> <p>21 issues on the part of Ms. Livingston in her</p> <p>22 job at the Post that were attributed to her</p> <p>23 Mystery Shopping?</p> <p>24 A. No.</p> <p>25 Q. Are you aware of whether or not</p>